

Letter of Findings Number: 10-0141P
Income Tax
For Tax Years 2005-08

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ISSUE

I. Tax Administration—Penalties.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

Taxpayer is a limited liability company which is taxed as a partnership. For the tax years 2005, 2006, 2007, and 2008, Taxpayer was required to file Indiana income tax returns, but did not do so until September of 2009. As a result, the Indiana Department of Revenue ("Department") issued assessments for late filing penalties for those years at the rate of \$250 for each year, totaling \$1000 for all four years. Taxpayer protests that it relied on a paid professional to handle its tax matters and that it relied on that professional's opinion that no returns were required. Taxpayer protests the imposition of penalties. Taxpayer did not request an administrative hearing. This Letter of Findings is written based on the information contained in the protest file.

I. Tax Administration—Penalties.

DISCUSSION

Taxpayer protests the imposition of late filing penalties for the tax years 2005-08. Taxpayer states that it relied on a certified public accountant to handle its tax matters and that, once it became aware of the requirement to file income tax returns in Indiana, it filed the returns which had been due. Taxpayer believes that it acted reasonably by hiring a professional and by filing the returns once it became aware of the requirement to file.

The penalty in question is imposed under IC § 6-8.1-10-2.1, which states in relevant part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under [IC 4-22-2](#) to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

(h) A:

- (1) corporation which otherwise qualifies under [IC 6-3-2-2.8\(2\)](#);
- (2) partnership; or
- (3) trust;

that fails to withhold and pay any amount of tax required to be withheld under [IC 6-3-4-12](#), [IC 6-3-4-13](#), or [IC 6-3-4-15](#) shall pay a penalty equal to twenty percent (20[percent]) of the amount of tax required to be withheld under [IC 6-3-4-12](#), [IC 6-3-4-13](#), or [IC 6-3-4-15](#). This penalty shall be in addition to any penalty imposed by section 6 of this chapter.

(i) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

(j) If a partnership or an S corporation fails to include all nonresidential individual partners or nonresidential individual shareholders in a composite return as required by [IC 6-3-4-12\(h\)](#) or [IC 6-3-4-13\(j\)](#), a penalty of five hundred dollars (\$500) per partnership or S corporation is imposed on the partnership or S corporation. (Emphasis added).

IC § 6-8.1-10-2.1(g) provides that, if a taxpayer fails to file a return for a listed tax which shows no tax liability for a particular year by the due date, then that taxpayer is subject to a penalty of \$10 per day the return is late, up to a total of \$250 per year.

Also, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added.)

Taxpayer protests that it acted reasonably by placing its reliance on a certified public accountant to accurately handle its tax matters. Taxpayer refers to IC § 6-8.1-10-2.1(d) and (e), which provide that the Department may waive penalty if the person upon whom penalty is imposed is able to show that the failure to properly file a return or remit payment for a listed tax acted reasonably. Taxpayer believes its hiring of a professional qualifies as reasonable and that penalty should therefore be waived. Also, Taxpayer states that this is the first venture in which these partners were involved and, as a result, that they were never acquainted with the filing requirements.

The Department does not agree with Taxpayer's protest. While it is true that Taxpayer hired a professional, it is also true that Taxpayer was responsible for its taxes. The fact that a taxpayer's tax professional does not know of a requirement to file Indiana income tax returns does not relieve that taxpayer of its requirement to file those Indiana returns. Also, Indiana's filing requirements are readily available from many sources. As provided by [45 IAC 15-11-2\(b\)](#), ignorance of Indiana's tax laws, rules, and regulations and failure to read and follow instructions provided by the department is treated as negligence. The late filing penalties were properly imposed.

FINDING

Taxpayer's protest is denied.

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